

**REMARKS**

Claims 11 and 13 to 31 are now pending.

Applicants respectfully request reconsideration of the present application in view of this response.

With respect to paragraph three (3) of the Final Office Action, while the objections may not be agreed with, to facilitate matters, claims 11, 17, and 18 have been rewritten to better clarify or define the subject matter. Support may be found in the Substitute Specification, including, for example, at page 2, lines 20 to 23, and at page 5, lines 9 to 12. Withdrawal of the objections is therefore respectfully requested.

With respect to paragraph four (4) of the Final Office Action, claims 11 and 13 to 31 were rejected under 35 U.S.C. § 112, second paragraph, as assertedly indefinite.

As explained above, while the rejections may not be agreed with, to facilitate matters, claims 11, 17, and 18 have been rewritten to better clarify or define the subject matter. The language “structurally configured identically” has been replaced with the feature “structurally shaped identically,” to better clarify that the phase terminal has a structure that is shaped identically to one of the positive terminal or the negative terminal. In addition, rewritten claim 18 better clarifies that the phase terminal is situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of the phase terminal that would be identical to an orientation of one of the structurally identically shaped positive terminal or structurally identically shaped negative terminal.

Accordingly, claim 11 and its dependent claims 13 to 16, claim 17 and its dependent claims 27 to 31, and claim 18 and its dependent claims 19 to 26 are definite.

Withdrawal of the definiteness rejections is therefore respectfully requested.

With respect to paragraph five-point-one (5.1) of the Final Office Action, claims 18 to 20, 22, and 23 were rejected under 35 U.S.C. § 102(e) as anticipated by Spitz et al., U.S. Patent No. 6,774,476.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is

respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the rejections may not be agreed with, to facilitate matters, claim 18 has been rewritten to provide the features that *the phase terminal is structurally shaped identically to one of the positive terminal or the negative terminal, and the phase terminal being situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of the phase terminal that would be identical to an orientation of one of the structurally identically shaped positive terminal or the structurally identically shaped negative terminal.*

As to the “Spitz” reference, Figures 2 through 7 only indicate two mounting plates, an electrically conductive insert, and semiconductor substrates. This arrangement wholly differs from the presently claimed subject matter since the phase terminal is not structurally shaped identically to one of the positive terminal or the negative terminal. Therefore, “Spitz” does not identically disclose (or even suggest) the feature in which *the phase terminal is structurally shaped identically to one of the positive terminal or the negative terminal*, as provided for in the context of claim 18, as presented.

Further, nowhere does “Spitz” identically disclose (or suggest) that the phase terminal is situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of the phase terminal that would be identical to an orientation of the structurally identically shaped positive or negative terminal. Therefore, “Spitz” does not identically disclose (or even suggest) the feature in which *the phase terminal being situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of the phase terminal that would be identical to an orientation of one of the structurally identically shaped*

*positive terminal or the structurally identically shaped negative terminal*, as provided for in the context of claim 18, as presented.

Accordingly, claim 18, as presented, and its dependent claims 19, 20, 22, and 23 are allowable.

It is therefore respectfully requested that the anticipation rejections be withdrawn.

With respect to paragraph five-point-two (5.2) of the Final Office Action, claims 11, 13 to 15, 17, 18, 20, 21, and 27 were rejected under 35 U.S.C. § 102(b) as anticipated by Watanabe, Japanese Patent Publication No. JP-60101958.

While the rejections may not be agreed with, to facilitate matters, claims 11, 17, and 18 have been rewritten to provide the feature that *the phase terminal is structurally shaped identically to one of the positive terminal or the negative terminal*. Further, claim 18 has been rewritten to provide the feature of *the phase terminal being situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of the phase terminal that would be identical to an orientation of one of the structurally identically shaped positive terminal or the structurally identically shaped negative terminal*.

As to the “Watanabe” reference, the Office Action of June 26, 2008 specifically admitted that “Watanabe does not disclose the phase terminal is structurally arranged identically to one of the positive terminal or the negative terminal.” (6/26/08 Office Action, p. 7). Further, the Office Action of June 26, 2008 admitted that “Watanabe does not disclose the phase terminal being situatedly rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically arranged positive terminal or the structurally identically arranged negative terminal.” (6/26/08 Office Action, p. 10).

It is respectfully submitted that any review of “Watanabe” makes plain that “Watanabe” does not identically disclose (or even suggest) the feature in which *the phase terminal is structurally shaped identically to one of the positive terminal or the negative terminal*, as provided for in the context of claims 11, 17, and 18, as presented. The Figures of “Watanabe” indicate that phase terminal 2 is not structurally shaped identically to either the positive terminal 1, or the negative terminal 4. Further, nowhere does “Watanabe” identically disclose (or suggest) that the phase terminal is situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of the phase terminal that would be identical to an orientation of the structurally identically shaped positive or negative terminal.

Therefore, “Watanabe” does not identically disclose (or even suggest) the feature in which *the phase terminal being situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of the phase terminal that would be identical to an orientation of one of the structurally identically shaped positive terminal or the structurally identically shaped negative terminal*, as provided for in the context of claim 18, as presented.

Accordingly, claim 11 and its dependent claims 13 to 15, claim 17 and its dependent claim 27, and claim 18 and its dependent claims 20 and 21 are allowable.

It is therefore respectfully requested that the anticipation rejections be withdrawn.

With respect to paragraph six (6) of the Final Office Action, claims 16, 19, 24 to 26, and 28 to 31 were rejected under 35 U.S.C. § 103(a) as unpatentable over Watanabe, further in view of Irmmler, International Patent No. WO-7900814.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 16 depends from claim 11, as presented, and claims 28 to 31 depend from claim 17, as presented, and are therefore allowable for at least the same reasons as claims 11 and 17, as presented, since the “Irmmler” reference does not cure – and is not asserted to cure –

the critical deficiencies of the “Watanabe” reference. As to the “Irmmler” reference, Figure 1 only refers to three metal washers having different diameters. Therefore, “Irmmler” does not disclose (or suggest) the feature that *the phase terminal is structurally shaped identically to one of the positive terminal or the negative terminal*, as provided for in the context of claims 11 and 17, as presented.

Claims 19, and 24 to 26 depend from claim 18, as presented, and are therefore allowable for at least the same reasons as claim 18, as presented, since the “Irmmler” reference does not cure – and is not asserted to cure – the critical deficiencies of the “Watanabe” reference. As to the “Irmmler” reference, Figures 1 and 4 do not disclose (or suggest) the features that *the phase terminal is structurally shaped identically to one of the positive terminal or the negative terminal*, and *the phase terminal being situated rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of the phase terminal that would be identical to an orientation of one of the structurally identically shaped positive terminal or the structurally identically shaped negative terminal*, as provided for in the context of claim 18, as presented.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by that Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

It is therefore respectfully requested that the obviousness rejections be withdrawn, since claims 16, 19, 24 to 26, and 28 to 31 are allowable.

With respect to paragraph seven (7) of the Final Office Action, the Final Office Action conclusorily asserts that “Spitz does teach above limitations.” (Final Office Action, p. 11). However, the feature of “structurally shaped identically” does not merely mean “that the phase terminal is running parallel to one of the positive terminal or the negative terminal,” as incorrectly assumed by the Final Office Action at page 3, but positively recites structural features of the terminals of the present claims. Further, the Final Office Action states that

"the examiner wonders how it could be recognized that the phase terminal already had rotated by 180°." (Final Office Action, p. 12). However, the phase terminal is not merely rotated, but is rotated in relation to an orientation of the phase terminal that would be identical to an orientation of a structurally identically shaped positive terminal or a structurally identically shaped negative terminal.

Accordingly, claim 11 and its dependent claims 13 to 16, claim 17 and its dependent claims 27 to 31, and claim 18 and its dependent claims 19 to 26 are allowable.

Accordingly, claims 11 and 13 to 31 are allowable.

### CONCLUSION

It is therefore respectfully submitted that all of claims 11 and 13 to 31 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

Dated: \_\_\_\_\_

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